IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

FRIDAY, THE 14TH SEPTEMBER 2007 / 23RD BHADRA 1929

CRL.A.No. 459 of 2000(A)

CC.665/1997 of JUDL.MAGISTRATE OF FIRST CLASS, VADAKARA

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APPELLANT:

S.I.OF POLICE,
VADAKARA POLICE STATION REP.
BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.PUZHAKKARA MOHAMMED

RESPONDENTS:

1. CHELIL KANNAN, S/O. KANARAN,
MALAYIL HOUSE, PONMERI AMSOM,
PARAMBIL DESOM.

2. CHEELIL RAJEEVAN, S/O.KELAPPAN,
PONMERI AMSOM, PARAMBIL DESOM.

3. MALAYIL NANU,S/O. KAPPIRI,
KOLAROTTUKUNI HOUSE,
VILLIAPPALLI AMSOM, DESOM.

4. MALAYIL DAMODARAN, S/O.KAPPIRI,
PONMERI AMSOM, PARAMBIL DESOM.

BY ADV. SRI.C.D.SHAJU
SMT.THUSHARA.V

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 14.09.2007 ALONG WITH CRA NO.1959 OF 2003, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. THANKAPPAN, J.

CRL.A.NOs.459/2000 & 1959/03

Dated this the 14th day of September, 2007.

JUDGMENT

The two appeals are filed against the same judgment of the Judicial Magistrate of First Class, Vadakara, in C.C.No.665/1997. Crl.A.No.459/2000 has been filed by the State under Section 377 of the Code of Criminal Procedure for enhancement of the punishment already awarded by the trial court against the respondents/accused. Crl.A.1959/2003 has been filed by the accused against the judgment of the sessions court. Since State had filed the appeal for enhancement, the appeal filed by the accused before the sessions court has been transferred to this Court and both the appeals are heard by this Court.

2. The Sub Inspector of Police, Vadakara Police Station, had filed a charge against respondents/accused alleging commission of the offences punishable under Sections 341,326 read with Section 34 of the I.P.C on the allegation that on 10.6.1997 at about 9 p.m while PW1 was walking along the road, all the accused

in furtherance of their common intention to cause grevious hurt to PW1, they voluntarily restrained PW1 and A4 beat PW1 on his forehead with a torch and accused Nos 1 to 3 restrained him. With the above charge, the appellants in Crl.A.No.1959/2003 faced trial. To prove the charge against the appellants/accused, prosecution examined nine witnesses and placed reliance on Exts.P1 to P6. MOs 1 and 2 were also produced. After closing the prosecution evidence, all the accused were questioned under Section 313 of the Code and they had denied the allegations. One witness was also examined as DW1 for and on behalf of the appellant/accused. After considering the entire evidence, the trial court found the appellants guilty under Sections 341 and 324 read with Section 34 of the I.P.C and they were sentenced to pay a fine of Rs.500/= each with default sentence of payment of fine, 7 days S.I under Section 341 and a fine of Rs.1,000/= each with default sentence of payment of fine, to a further period of six months S.I under Section 324. It is further ordered that if the fine is realised, Rs.2,000/= shall be paid to PW1. Against which, these appeals have been filed by the appellants. Since, the punishment awarded against the appellants are not sufficient, Crl.A.No.459/2000 has been filed by the State for enhancement of

the sentence. It is reported that all the accused have paid the fine imposed by the court below and during the pendency of the appeals since accused 3 and 4 were expired, no legal representatives have been impleaded. When these appeals came up before this Court for hearing, this Court heard the learned counsel appearing for the appellants as well as the Public Prosecutor.

2. The question to be decided in these appeals is that whether the finding of the trial court is correct and that whether the sentence awarded against the respondents/accused is sufficient or whether the sentence could be enhanced. The prosecution case is that while PW1 was walking along the road on the day of the incident, A1 asked him about a previous quarrel entered between PW1 and the brother of A1. To that, PW1 had answered that the same matter has already been settled. However, A1 uttered that he would kill him. Thereupon the other accused waylaid him and the 4th accused beat him with a torch which had with him and inflicted injury on the forehead of PW1. To prove the case against the appellants/accused, the trial court believed the evidence of PW1 and the other eye witnesses to the occurrence. PW1 is the

injured, who had stated before the court that he was restrained by A1 and A3 and beat by A4. It was also proved by Ext.P6 wound certificate given by PW8 - the doctor at the time of evidence of that PW1 was the injured and one of his teeth was lost due to the fracture caused to his gum. It is also found by the trial court that Pws 2 to 4 came to the spot immediately and they had watched the incident of infliction of injury by A4. PW5 was examined to prove the incident. He was a toddy shop owner in the place of incident. He had stated that he had heard a sound at the road and he went to PW1. He had seen that PW1 was having a bleeding injury. PW7 was the A.S.I, who registered the case against the appellant. PW8 is the Civil Surgeon attached to the Government Hospital, who examined the injured and issued the wound certificate. The doctor had also stated that the injury could be caused by beating with a weapon like MO2. PW9 is the investigating officer who had filed the final charge before the court. The trial court after believing the evidence of these witnesses found that the prosecution had succeeded in proving the case against the respondents/accused. A reading of the entire evidence and on hearing the counsel appearing on either side, this Court is of the view that the judgment of the trial court is on

evidence and it requires no interference. Now it is reported that A3 and A4 are no more and the appellant had already paid the amount of fine imposed by the court.

In the above circumstances, this Court see no ground to interfere with the judgment of the trial court. The next question to be considered is whether the punishment awarded against the accused in the case is insufficient or not. It has come out in evidence that all the accused and PW1 were belong to the same group of political faction and they were moving together and the incident had happened in the year 1997. If so, the relationship between the appellants and the witnesses has now become very cordial and in the above circumstances, this Court do not feel that this is a fit case to enhance the punishment already awarded by the court. Accordingly, both the appeals stand dismissed confirming the judgment of the trial court.

K. THANKAPPAN, JUDGE.

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K. THANKAPPAN, J.

CRL.A.NOs459/00 &1959/03.

JUDGMENT

14th September, 2007.